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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|------------------|
| 10/735,084 | 12/12/2003 | Richard Rollin | 5297/198 | 1606 |
| 7590 | 05/10/2006 | | EXAMINER | |
| MICHAEL H. BANIAK BANIAK PINE & GANNON Suite 1200 150N. Wacker Drive Chicago, IL 60606 | | | CHAPMAN, GINGER T | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3761 | |
| | | | DATE MAILED: 05/10/2006 | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/735,084 | ROLLIN ET AL. | |
| | Examiner Ginger T. Chapman | Art Unit 3761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on _____.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-16 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
 5) Claim(s) ____ is/are allowed.
 6) Claim(s) 1-16 is/are rejected.
 7) Claim(s) ____ is/are objected to.
 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 12 December 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/27/04 & 8/26/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character not mentioned in the description: Figure 1 (9).

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-13 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waddell et al (EP 1,314,441) in view of Sandoval et al (US 4,266,765) and further in view of Bidwell (US 3,363,626).

With regard to claims 1, 3 and 11, Waddell discloses a thorax drainage system (fig. 1) comprising a first container (14) forming a secretion collecting chamber; a separate second container forming a nonreturn valve in the form of an underwater seal (12); a drainage line (18) attached to a patient (16) and leads into secretion collecting chamber (14), a connecting line (40) between the two containers (12, 14); a vacuum pump (10); a connecting line (42) between vacuum pump (10) and container forming underwater seal (12), and a mobile trolley forming a mobile system (fig. 7D; c. 9, ll. 37-43), in which system the two containers (12, 14) can be closed tight with associated covers (38, 38) into which the lines (40, 42) open (26, 28), and at least the drainage line is a disposable line (c. 6, ll. 5-15).

Waddell discloses the components form a mobile system but does not expressly disclose a trolley for receiving all the system components. Sandoval et al, at column 1, lines 9-40 expresses the desire for a mobile trolley for receiving and maneuvered the heavy and bulky components for thorax drainage devices (c. 1, l. 28) that are generally connected to the patient by tubes (c. 1, l. 24). As seen in Figure 1, Sandoval et al disclose a mobile trolley (11). In particular Sandoval teach the mobile trolley (11) is for receiving the system components for a thorax drainage system (col. 3, ll. 65 to col. 4, ll. 21). Therefore it would have been obvious to

one having ordinary skill in the art at the time the invention was made to form the mobile thorax drainage system of Waddell with a mobile trolley for receiving all system components since Sandoval et al state at col. 1, ll. 28-35 that the advantage of forming a system with such a mobile trolley is that a patient with heavy and bulky lung drainage devices can be easily transported with a reduced number of nurses.

Waddell discloses the thorax drainage system but does not expressly disclose a battery. Bidwell, at col. 7, ll. 56-59 teaches the ability of the activating elements of a thorax drainage system such as a motor and vacuum pump to be operated in response to portable power, i.e. a battery, thus disclosing the desire for a portable thorax drainage system. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the system of Waddell having a battery as taught by Bidwell et al since Bidwell states at col. 7, ll. 70-72 that the advantage of forming such a thorax drainage system is that the patients' life can be prolonged while transporting between a battlefield and hospital facilities.

With respect to claims 2, 10 and 16, Bidwell teaches that the prior art containers were disassembled and sterilized after each use, i.e. reusable (c. 2, ll. 67-68).

With respect to claims 4-6 and 12-13, Sandoval et al disclose the trolley (11) is designed to receive all the components of the thorax drainage system (c. 4, ll. 14-21; also c. 3, ll. 67-68 to c. 4, ll. 1-2).

With respect to claims 7 and 8, Waddell discloses the secretion-collecting chamber (14) is a first container and the underwater seal (12) is a separate second container forming a nonreturn valve (c. 6, ll. 49-50) and the two containers can be closed with associated covers (38, 38) (see claim 1, *supra*).

With respect to claims 9 and 15, Waddell discloses the drainage line is disposable (see claim 1, *supra*).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waddell et al (EP 1,314,441) in view of Sandoval et al (US 4,266,765) and further in view of Bidwell (US 3,363,626) as applied to claim 11 and further in view of Stacy et al (US 4,740,202).

The combination of Waddell, Sandoval and Bidwell disclose the secretion-collecting chamber is a container and the connecting line and drainage line open into the chamber but do not expressly disclose a cover. Stacy et al teach the chamber having a cover thus disclosing the desire for a cover. As best depicted in Figure 1, Stacey et al disclose the secretion-collecting chamber (10) can be closed tight with associated cover (24) and the connecting line (20) and the drainage line (14) open into the cover. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container of Waddell having a cover as disclosed by Stacey et al since Stacey states at column 1, lines 35-40 that the advantage of forming the collection chamber with such a cover is that the drainage system is still operable even if the collecting chamber tips over.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wakabayashi (US 6,352,525) discloses a thorax drainage system having batteries (fig. 2). Kurtz et al (US 5,261,897) discloses a portable drainage system (fig. 1). Although these references are relevant prior art, neither was used to reject any claims in this Office action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman
Examiner, Art Unit 3761
05/07/06

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

